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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/821,001

04/07/2004

Peter Palese

NS104D1C1

9293

36577 7590 09/14/2007
JOHNATHAN KLEIN-EVANS
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EXAMINER

GUZO, DAVID

ART UNIT

PAPER NUMBER

1636

MAIL DATE

DELIVERY MODE

09/14/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/821,001

Applicant(s)

PALESE ET AL.

Examiner

David Guzo

Art Unit

1636

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 January 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 12 March 2007. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: 81, 82, 85-89 and 92-95.
Claim(s) rejected: 80, 83, 84, 90, 91 and 96.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☒ Other: See Continuation Sheet.


DAVID GUZO
PRIMARY EXAMINER

Continuation of 3. NOTE: The claims presented in the amendment of 1/26/07 introduce subject matter which had not been previously claimed and hence said new claims would require further search and/or consideration. For example, claim 82 includes the limitations of newly amended claim 80. The previous version of claim 82 did not include these newly presented limitations. The same rationale applies for claims 86-88, etc. Also, new claims 97-98 recite limitations not previously presented and would require further search and/or consideration.

Continuation of 11. does NOT place the application in condition for allowance because: The request for reconsideration is based upon entry of the after final amendment. Since said amendment has not been entered, said request is moot..

Continuation of 13. Other: In view of the papers filed 1/26/07, it has been found that this nonprovisional application, as filed, through error and without deceptive intent, improperly set forth the inventorship, and accordingly, this application has been corrected in compliance with 37 CFR 1.48(a). The inventorship of this application has been changed by addition of inventors Mark Krystal and Jeffrey Parvin. The application will be forwarded to the Office of Initial Patent Examination (OIPE) for issuance of a corrected filing receipt, and correction of Office records to reflect the inventorship as corrected.

In view of the papers filed 1/26/07, the inventorship in this nonprovisional application has been changed by the deletion of inventor Adolfo Garcia-Sastre.

The application will be forwarded to the Office of Initial Patent Examination (OIPE) for issuance of a corrected filing receipt, and correction of Office records to reflect the inventorship as corrected.

DECLARATION
AND POWER OF ATTORNEY

See Paper
filed 1/26/07
for
inventorship
connections
9/8/07
JC

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below at 201 et seq. underneath my name.

I believe I am the original, first and sole inventor if only one name is listed at 201 below, or an original, first and joint inventor if plural names are listed at 201 et seq. below, of the subject matter which is claimed and for which a patent is sought on the invention entitled:

"RECOMBINANT NEGATIVE STRAND RNA VIRUS EXPRESSION SYSTEMS AND VACCINES"

the specification of which:

☐ is attached hereto

☒ was filed in the United States on June 1, 1994 as Application Serial No. 08/252,508 (for declaration not accompanying application) with amendment(s) filed on _____ (if applicable)

☐ was filed as PCT international application Serial No. _____ on _____ and was amended under PCT Article 19 on _____ (if applicable)

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information known to me to be material to patentability as defined in Title 37, Code of Federal Regulations, §1.56.

I hereby claim foreign priority benefits under Title 35, United States Code, §119/§172 of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed:

EARLIEST FOREIGN APPLICATION(S), IF ANY, FILED PRIOR TO THE FILING DATE OF THE APPLICATION			
APPLICATION NUMBER	COUNTRY	DATE OF FILING (day, month, year)	PRIORITY CLAIMED UNDER 35 U.S.C. 119/172
			YES <input type="checkbox"/> NO <input type="checkbox"/>
			YES <input type="checkbox"/> NO <input type="checkbox"/>

I hereby claim the benefit under Title 35, United States Code, §120 of any United States application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code §112, I acknowledge the duty to disclose material information as defined in Title 37, Code of Federal Regulations, §1.56(a) which occurred between the filing date of the prior application and the national or PCT international filing date of this application:

APPLICATION SERIAL NO.	FILING DATE	STATUS		
		PATENTED	PENDING	ABANDONED
08/190,698	February 1, 1994		X	
07/925,061	August 4, 1992			X
07/527,237	May 22, 1990	X		
07/440,053	November 24, 1989			X
07/399,728	August 28, 1989			X



POWER OF ATTORNEY: As a named inventor, I hereby appoint S. Leslie Misrock (Reg. No. 18872), Harry C. Jones, III (Reg. No. 20280), Benj A. Terzian (Reg. No. 20060), Gerald J. Flintoft (Reg. No. 20823), David Weild, III (Reg. No. 21094), Jonathan A. Marshall (Reg. No. 24614), Barry D. Rein (Reg. No. 22411), Stanton T. Lawrence, III (Reg. No. 25736), Isaac Jarkovsky (Reg. No. 22713), Joseph V. Colaianni (Reg. No. 20019), Charles E. McKenney (Reg. No. 22795), Philip T. Shannon (Reg. No. 24278), Francis E. Morris (Reg. No. 24615), Charles E. Miller (Reg. No. 24576), Gidon D. Stern (Reg. No. 27469), John J. Lauter, Jr. (Reg. No. 27814), Brian M. Poissant (Reg. No. 28462), Brian D. Coggio (Reg. No. 27624), Rory J. Radding (Reg. No. 28749), Stephen J. Harbulak (Reg. No. 29166), Donald J. Goodell (Reg. No. 19766), James N. Palik (Reg. No. 25510), Thomas E. Friebe (Reg. No. 29258), Laura A. Coruzzi (Reg. No. 30742), Jennifer Gordon (Reg. No. 30753), Jon R. Stark (Reg. No. 30111), Allan A. Fanucci (Reg. No. 30256), Geraldine F. Baldwin (Reg. No. 31232), Victor N. Balancia (Reg. No. 31231), Albert P. Halluin (Reg. No. 25227), and Marcia H. Sundeen (Reg. No. 30893), whose address is Pennie & Edmonds, 1155 Avenue of the Americas, New York, New York 10036, and each of them, my attorneys, to prosecute this application, and to transact all business in the Patent and Trademark Office connected therewith.

COPY FROM PARENT

 26-003710US
 PENNIE & EDMONDS DOCKET NO. 6923-844

SEND CORRESPONDENCE TO: PENNIE & EDMONDS 1155 AVENUE OF THE AMERICAS NEW YORK, N.Y. 10036-2711				DIRECT TELEPHONE CALLS TO: PENNIE & EDMONDS (212) 790-9090	
2 0 1	FULL NAME OF INVENTOR	LAST NAME PALESE	FIRST NAME PETER	MIDDLE NAME	
	RESIDENCE & CITIZENSHIP	CITY Leonla	STATE OR FOREIGN COUNTRY New Jersey	COUNTRY OF CITIZENSHIP U.S.A.	
	POST OFFICE ADDRESS	STREET 414 Highwood Avenue	CITY Leonla	STATE OR COUNTRY New Jersey	ZIP CODE 07605
2 0 2	FULL NAME OF INVENTOR	LAST NAME GARCIA-SASTRE	FIRST NAME ADOLFO	MIDDLE NAME	
	RESIDENCE & CITIZENSHIP	CITY New York	STATE OR FOREIGN COUNTRY New York	COUNTRY OF CITIZENSHIP SPAIN	
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2 0 3	FULL NAME OF INVENTOR	LAST NAME	FIRST NAME	MIDDLE NAME	
	RESIDENCE & CITIZENSHIP	CITY	STATE OR FOREIGN COUNTRY	COUNTRY OF CITIZENSHIP	
	POST OFFICE ADDRESS	STREET	CITY	STATE OR COUNTRY	ZIP CODE
2 0 4	FULL NAME OF INVENTOR	LAST NAME	FIRST NAME	MIDDLE NAME	
	RESIDENCE & CITIZENSHIP	CITY	STATE OR FOREIGN COUNTRY	COUNTRY OF CITIZENSHIP	
	POST OFFICE ADDRESS	STREET	CITY	STATE OR COUNTRY	ZIP CODE
2 0 5	FULL NAME OF INVENTOR	LAST NAME	FIRST NAME	MIDDLE NAME	
	RESIDENCE & CITIZENSHIP	CITY	STATE OR FOREIGN COUNTRY	COUNTRY OF CITIZENSHIP	
	POST OFFICE ADDRESS	STREET	CITY	STATE OR COUNTRY	ZIP CODE
2 0 6	FULL NAME OF INVENTOR	LAST NAME	FIRST NAME	MIDDLE NAME	
	RESIDENCE & CITIZENSHIP	CITY	STATE OR FOREIGN COUNTRY	COUNTRY OF CITIZENSHIP	
	POST OFFICE ADDRESS	STREET	CITY	STATE OR COUNTRY	ZIP CODE

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

SIGNATURE OF INVENTOR 201  PETER PALESE	SIGNATURE OF INVENTOR 202  ADOLFO GARCIA-SASTRE	SIGNATURE OF INVENTOR 203
DATE 11/9 .1994	DATE 11/9 .1994	DATE
SIGNATURE OF INVENTOR 204	SIGNATURE OF INVENTOR 205	SIGNATURE OF INVENTOR 206
DATE	DATE	DATE